

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CAUSE NO. 1:17-cv-00367**

**TAWANA B. BROOKS, EXECUTOR OF THE
ESTATE OF BETTY PURSER BROOKS**

PLAINTIFF

vs.

**SSC CONCORD OPERATING COMPANY LLC
d/b/a BRIAN CENTER HEALTH & RETIREMENT/
CABARRUS; NORTH CAROLINA HOLDCO, LLC;
SMV CONCORD, LLC; SAVASENIORCARE
ADMINISTRATIVE SERVICES, LLC;
SAVASENIORCARE, LLC; SAVASENIORCARE
CONSULTING, LLC; LIVING CENTERS-
SOUTHEAST, INC.**

DEFENDANTS

**SMV CONCORD, LLC'S
ANSWER AND DEFENSES TO PLAINTIFF'S COMPLAINT**

NOW COMES Defendant, SMV Concord, LLC, one of the Defendants herein, pursuant to Fed.R.Civ.P. 8, and responds to the allegations in Plaintiff's Complaint by stating as follows:

FIRST DEFENSE

This Defendant hereby pleads the applicable statutes of limitations as an affirmative defense and as a complete and total bar to the claims against it in Plaintiff's Complaint.

SECOND DEFENSE

The allegations contained in Plaintiff's Complaint fail, in whole or in part, to state a claim upon which relief can be granted; and therefore, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) of the *Federal Rules of Civil Procedure*.

THIRD DEFENSE AND ANSWER

Responding to the allegations in Plaintiff's Complaint paragraph by paragraph, SMV Concord, LLC states as follows:

1. This Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations of Paragraph 1 of Plaintiff's Complaint and for purposes of pleading, denies the same.

2. This Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations of Paragraph 2 of Plaintiff's Complaint and for purposes of pleading denies same.

3. This Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations of Paragraph 3 of Plaintiff's Complaint and for purposes of pleading denies same.

4. This Defendant denies the allegations of Paragraph 4 of Plaintiff's Complaint, except that it admits that SSC Concord Operating Company LLC d/b/a Brian Center Health & Retirement/Cabarrus is licensed by the North Carolina Department of Human Resources, Division of Health Service Regulation to, and does, operate, manage and control the nursing home Brian Center/Cabarrus located at 250 Bishop Lane, Concord, North Carolina.

5. This Defendant admits the allegations of Paragraph 5 of Plaintiff's Complaint.

6. This Defendant denies the allegations of Paragraph 6 of Plaintiff's Complaint, except that it admits that North Carolina Holdco, LLC is a Delaware limited liability company.

7. This Defendant denies the allegations of Paragraph 7 of Plaintiff's Complaint, except that it admits that it is a Delaware limited liability company.

8. This Defendant denies the allegations of Paragraph 8 of Plaintiff's Complaint, except that it admits that SavaSeniorCare Administrative Services, LLC, SavaSeniorCare Consulting, LLC, and SavaSeniorCare, LLC are all Delaware limited liability companies.

9. This Defendant denies the allegations of Paragraph 9 of Plaintiff's Complaint, except that it admits that Living Centers-Southeast, Inc. is a corporation created and existing under the laws of the State of North Carolina.

10. This Defendant denies the allegations of Paragraph 10 of Plaintiff's Complaint.

11. This Defendant denies the allegations of Paragraph 11 of Plaintiff's Complaint.

12. Paragraph 12 of Plaintiff's Complaint contains legal statements and conclusions to which no response is required. To the extent this paragraph of Plaintiff's Complaint could be construed to assert claims or allegations against this Defendant, the same are denied.

13. Paragraph 13 of Plaintiff's Complaint contain legal statements and conclusions to which no response is required. To the extent that this paragraph of Plaintiff's Complaint could be construed to assert claims or allegations against this Defendant, the same are denied.

14. This Defendant reasserts and realleges answers to Paragraphs 1 through 13 as its answer to Paragraph 14 of Plaintiff's Complaint.

15. This Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations of Paragraphs 15 to 53 of Plaintiff's Complaint and, therefore, denies same.

This Defendant denies the Plaintiff is entitled to the relief requested in the last unnumbered paragraph of Plaintiff's Complaint beginning with "WHEREFORE," and including subparagraphs 1 through 4. This Defendant denies that the Plaintiff is entitled to relief of judgment from it in any amount or type whatsoever.

FOURTH DEFENSE

If the Court should find that the Plaintiff has failed to properly comply with Rule 9(j) of the North Carolina Rules of Civil Procedure the Defendant facility would assert that the Plaintiff's claims against it are invalid and should be dismissed with prejudice.

FIFTH DEFENSE

The Defendant facility hereby gives notice that it intends to rely upon such other defenses as may become available or appear during investigation and discovery in this case and hereby reserves the right to Amend this answer to assert any such defense, including those found in Rule 12(h).

WHEREFORE, having fully responded to the allegations contained in Plaintiff's Complaint, this Defendant prays unto this Court as follows:

- a). That Plaintiff's Complaint be dismissed with prejudice in whole or in part if so applicable;
- b.) That all issues of fact be tried by a jury;
- c). That this Defendant have and recover its costs in this action, including attorney's fees and
- d.) For such other and further relief as this Court deems just and proper.

Respectfully submitted this, the 28th day of April, 2017.

SMV CONCORD, LLC

HAGWOOD ADELMAN TIPTON PC

BY: /s/ David M. Eaton

Carl Hagwood (NC Bar No. 43919)

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing document on all of the parties to this cause by:

- ☐ Hand delivering a copy hereof to each party's attorney as listed below
- ☐ Depositing a copy hereof, postage paid, in the United States Mail, addressed to each party's attorney as listed below
- ☐ Depositing a copy hereof with a nationally recognized overnight courier service, for overnight delivery, addressed to each party's attorney as listed below
- ☐ Telecopying a copy hereof to each party's attorney as listed below
- ☒ Electronically filing a copy of hereof with the Court's electronic case filing system which will send electronic mail notification of the filing of the foregoing document to each party's attorney as listed below
- ☐ Sending via electronic mail to each party's attorney as listed below

Philip R. Miller, III, Esq.
Lauren N. Raynor, Esq.
Blanchard, Miller, Lewis & Isley, P.A.
1117 Hillsborough Street
Raleigh, NC 27603

This, the 28th day of April, 2017.

BY: /s/ David M. Eaton
David M. Eaton